

IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
ST. CHARLES COUNTY, MISSOURI
CIRCUIT JUDGE DIVISION

FILED

OCT 22 2020

VICTORIA DATT,
Contestant(s),

vs.

NICHOLAS SCHROER,
Contestee(s).

Case No.: 2011-CC00772

Div. 4

CIRCUIT CLERK
ST. CHARLES COUNTY

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

FINDINGS OF FACT

Before this Court is Contestant Victoria Datt's (hereinafter "Datt") Verified Petition to Challenge Contestee Nicholas Schroer's (hereinafter "Schroer") Candidate Qualifications as Representative for Missouri's 107th District.

Contestant (hereinafter Datt) filed her Verified Petition to Challenge Schroer's Candidate Qualifications on August 20, 2020. In her Verified Petition Datt alleges that Schroer, the Republican nominee for Missouri's 107th District, changed his residence out of the 107th District and was thus ineligible to be placed on the ballot for the November 2020 election. *See Verified Petition to Challenge Contestee's Candidate Qualifications*, ¶ 6-9.

The matter to be decided by this Court is whether Schroer, in purchasing a residence outside Missouri's 107th District, is ineligible to represent the constituents who reside within Missouri's 107th District even though Schroer entered into a lease to reside at 305 San Jose Drive, O'Fallon, Missouri 63366, a residence located within Missouri's 107th District.

On or about May 21, 2020, Schroer, the House Representative for Missouri's 107th District, sold his residence located at 504 Deer Brook Drive, O'Fallon, Missouri 63366, (hereinafter "Deer Brook"), and purchased a residence located outside Missouri's 107th District (hereinafter "107th"), in Defiance, Missouri. Specifically, the Defiance residence is known as 865 Outback Court, Defiance, Missouri 63341, (hereinafter "Outback"). Schroer moved his family into the Outback residence and entered into a lease with the Gerst family located at 305 San Jose Drive, O'Fallon, Missouri 63366 (hereinafter "Gerst Home"), in order to remain within the 107th district. *Trial Transcript*, p. 67, lines 2-5; p. 68, lines 13-18; p. 121, lines 10-12. The lease was to expire in the year 2022. *Id.* p. 147, lines 7-8.

The Gerst home was a three-bedroom one-bathroom home with basement occupied by Mary Gerst and her mother, Elizabeth Gerst, where owners and residents of the home who had leased the home to Schroer so that he could reside within the 107th. *Contestant's Verified Petition*, p. 2, ¶ 12; p. 3, ¶ 14. Schroer entered into a lease with Mary Gerst so that he could live and reside at the address along with Mary and Elizabeth Gerst. *Trial Transcript*, p. 67, lines 5. Schroer's address on his candidate committee form list the Gerst Home as his address and his residence. *Id.*, p. 72, lines 2-4. The bank account for Friends of Nicholas Schroer list the Gerst Home as its address. *Id.* p. 75, lines 6-8. Schroer's CASENET lawyer account lists the Gerst Home as its registered address. *Contestee's Exhibit B; Trial Transcript* p. 75, lines 16-21. Schroer receives his mail at the Gerst Home. *Id.* p. 83, lines 22-25. Schroer's Missouri drivers license reflects his address as the Gerst Home. *Id.* p. 86, lines 6-8. Schroer's voter registration card lists the Gerst Home as his address. *Id.* p. 87, lines 15-16; p. 88, lines 21-24. Schroer intends to serve the constituents of the 107th while living at the Gerst Home. *Id.*

p. 102, lines 15-20. Schroer's purpose as a member of the general assembly is to be a voice and advocate for the residents of the 107th. *Id.* p. 59, lines 3-8.

On May 21, 2020, Schroer and his wife executed a Deed of Trust and a Certified Deed of Trust for the Outback property. *Contestant's Trial Exhibits*, 2, 3. On May 21, 2020, Schroer and his wife signed a residential loan application for the Outback property as borrower along with his wife listing said property as the primary residence. *Id.* 4. Schroer's vehicle insurance lists the Outback property on the declaration page of the policy for purposes of coverage of his vehicle. *Id.* 5. Schroer's credit application for the Dodge Ram vehicle, dated May 28, 2020, lists the Outback address as his residence.

After review of the testimony at trial, pre and post-trial briefs as well as relevant case law the Court finds the following factual determinations:

- 1) The testimony of Representative Nicholas Schroer was credible;
- 2) Representative Nicholas Schroer's entering into a lease with the Gerst Home manifest his intention to remain a resident of the 107th in order to serve the constituents of Missouri's 107th District;
- 3) After a court tried trial, through pre and post-trial briefs as well as examination of all relevant case law, this Court concludes that Victoria Datt has failed to satisfy her burden of establishing a lawful basis from which to remove Representative Nicholas Schroer from the ballot.

CONCLUSIONS OF LAW

"Question of residence or domicile is one of fact, a question often difficult to determine. The words "residence" and "domicile" may be used interchangeably..." *State of Missouri ex rel. King, Jr. v. Walsh*, 484 S.W.2d 644 (Mo. Banc 1972), citing to *In re Ozias' Estate*, supra, 29 S.W.2d at 243(5); 28 C.J.S. Domicile s 2b, p. 7.

In the present case Datt alleges that Schroer's real residence is the Outback address as evidenced by Schroer's purchase of the Outback home as well as moving his family there in addition to the credit application for the loan on his vehicle, loan application for his deed of trust, and declaration page associated with his insurance application for his Dodge Ram vehicle listing Outback as his residence. *Contestants Trial Exhibits, 2-5.*

Schroer testified that he intended to lease the premises at Gerst Home for the purpose of continuing to represent the 107th and its constituents. *Trial Transcript*, p. 102, lines 15-20; p. 59, lines 3-8. "It has been said that residence is largely a matter of intention, to be determined not only from the utterances of the person whose residence is in issue but also from his acts and in the light of all the facts and circumstances of the case." *State ex rel King, Jr.*, 644. Schroer alleges that the intent of entering into a lease with the Gerst Home was to manifest his intent to continue his residency within the 107th for the purpose of representing the constituents of the 107th district. *Trial Transcript*, p. 72, lines 2-4. It is through Schroer's testimony and the facts presented at trial that are factors this Court took into consideration of determining Schroer's purpose and intent of entering into the Gerst Home lease.

Datt asserts that Schroer's intention was to maintain the Outback address as his residence and that the Gerst Home was his "home" for any purpose other than to attempt to keep his seat as a State Representative. *Contestant's Post-Trial Brief*, p. 15. In support thereof, Datt directs this Court's attention to the fact that Schroer listed Outback as his residence on the Outback deed of trust, credit application form, insurance form, has above mentioned, as well as the fact that he testified that he had slept at the Outback address and attended to familial duties from time to time. Schroer, at his deposition of September 9, 2020, testified he had taken showers at the Outback residence. *Deposition*

Transcript of Nicholas Schroer, p. 30, lines 15-20; Schroer had spent the night at the Outback address, *Id.* p. 30, lines 21-25; had belongings at the Outback address, *Id.* p. 30, lines 8-14.

Datt describes Schroer's statements as self-serving of his supposed intent to reside in O'Fallon and such statements do not rebut the presumption that he lives with his wife and children at the Outback address and this presumption is overwhelming evidence that Schroer considers the Outback address as his home. *Contestant's Post-Trial Brief*, p. 1.

However, if it is undisputed that Schroer resides at the Outback address with his family, as Datt alleges, then how does this Court reconcile Schroer's entering into a lease with the Gerst Home with the *intent* (emphasis added) to serve and advocate for the constituents of the 107th, not to mention the several address changes involving his CASENET account, his candidate filing form, his Missouri Driver's License and voter registration from the Deer Brook address to the Gerst Home evidencing an obvious attempt to list the Gerst Home as his residence?

Without a doubt the facts in the present case are conflicting. It may not be so much what Schroer intended to do but what he never intended to do which appears that he had no intention of relinquishing his residency to remain within the 107th.

In *King*, the Court defines domicile and residence as terms that may be used interchangeably. *State ex rel. King, Jr.*, 644. "One's original domicil is favored and where the facts are conflicting, the presumption is strongly in favor of an original or former domicil as against an acquired one." *Id.* at 645.

This "strong presumption" test, as the *King* court fashioned, is articulated in *George v. Jones*, 317 S.W.3d 662 (Mo. App. 2010). Samuel Jones was a Lawrence County, Missouri candidate for associate judge. Jones did not reside in Lawrence County at the time of trial but, instead, lived in Jackson County, Missouri with his wife. *Id.* 664-

665. The reason Jones lived in Jackson County was that his wife was suffering from cancer at the time and Jones desired a home close to the medical facilities for his wife's chemotherapy treatment. *Id.*

George challenged Jones candidacy qualifications on the ground that Jones did not reside within Lawrence County, Missouri, continuously for the required one-year period prior to filing. George cited RSMo. 478.320.6's language "reside in" required Jones to have an actual physical presence within the county. *Id.* 666. However, upon appellate review the Court found that George's argument was without merit. *Id.* The Court in *George*, citing to *Lewis v. Gibbons*, 80 S.W.3d 461, 466 (Mo. Banc 2002) held that "In construing § 478.320.6, our Supreme Court declared: "The purpose of residency statutes is to ensure that governmental officials are sufficiently connected to their constituents to serve them with sensitivity and understanding." *George* at 666-667. The court further found that Jones's continuous physical presence in Lawrence County, Missouri, for at least one year prior to election was not required. The Court, in *George* citing the Supreme Court's holding in *Lewis*, stated the issue was whether Jones was connected to Lawrence County to sufficiently *serve the constituents* (emphasis added) with sensitivity and understanding. Jones was found to meet this requirement by the Missouri Supreme Court. *Id.* 668. The Court determined that the phrases "resided in" and "resident of" merely required Jones to be "sufficiently connect to his constituents. *Id.*

Analogous to the facts in *George*, Schroer purchased the Outback home for the purpose of having his daughter in a school district that provided certain services for a medical condition for which the daughter was diagnosed. *Trial Transcript*, p. 60, lines 3 – p. 62, line 16. It is not disputed that Schroer spent time at the Outback residence, much as Jones did in Jackson County, Missouri, for his wife's cancer treatment. It is also not disputed that Schroer entered into a Gerst Home lease for the purposes of residing in the

107th and serving the constituents of the 107th. *Trial Transcript*, p. 58, line 23 – p. 59, line 8.

As above mentioned Schroer receives his mail at the Gerst Home, his candidate committee form, Lawyer CASENET Account, and candidate bank account all list the Gerst Home as his resident address. “Conduct is an important factor in determining intention as actions speak louder than words.” *Barrett v. Parks*, 352 No. 974, 180 S.W.2d 665, 666 (1944). Schroer’s conduct, in maintaining his connection with his constituents is, in light of the above stated actions, evidence of his connection and sensitivity to his constituents needs.

Datt contends that Schroer’s statements of his intent to reside at the Gerst Home are all self-serving and do not refute the overwhelming evidence showing that Schroer considers Defiance to be his home. *Contestant’s Post-Trial Brief*, p. 1. “In determining the issue of residence, the fact finder is entitled to believe all, none or part of the declarations of the person subject to inquiry.” *Fritzshall v. Bd. Of Police Comm’rs*, 886 S.W.2d 20, 25-28 (Mo.App. 1994). This court was able to judge the credibility of Schroer’s testimony and determined it to be credible at the trial.

Datt further alleges that Schroer manifest his intention to reside in the Outback home through his signature on the loan application for the Outback home, the Deed of Trust, and his application for his vehicle insurance all listing the Outback home as his residence. *Contestant’s Trial Exhibits*, 2-5. Datt then relies on two primary cases involving the Court of Appeals decisions upholding the Board of Police Commissioners findings giving significant weight to the administrative decisions of these Boards.

In *Fritzshall*, 886 S.W.2d 20 (Mo.App. 1994), the Petitioner was a Kansas City, Missouri, policeman was required to reside in Kansas City, Missouri, pursuant to employment regulations requiring a Kansas City, Missouri police officer to reside in

Kansas City, Missouri. When it was discovered that Fritzshall was living in Raymore, Missouri, the Board of Police Commissioners terminated Fritzshall after an administrative hearing. The Board found Fritzshall in violation of Policy 205 requiring residency in Kansas City, Missouri. The Board made their determination upon RSMo 84.570, Police force – qualifications – competitive examination – eligible list – rules by board. – 1. This statute provides that “Notwithstanding any other provision of law, the board shall have the sole authority to determine conditions of employment for police officers pursuant to section 84.460.” RSMo. 84.460 authorizes the Board of Police exclusive management and control of police force. *RSMo. 84.570*. Thus, the Board of Police’s decision was based on its authority in interpreting Policy 205, for which it had the authority.

At the hearing, Fritzshall testified that he always intends to return to his home in Raymore when ever he leaves Raymore and never testified that he ever intended to abandon Raymore as his residence. *Fritzshall* at 27. The Fritzshall Court further acknowledged that “On the facts of this case, the Board decision could have gone either way. If the evidence would warrant either of two opposed findings, we must affirm.” *Id. at 28*.

In the present case Schroer does testify that he intended to live at the Gerst Home so that he could serve the constituents of the 107th. Schroer never stated he intended to remain at the Outback residence while serving the 107th. In addition, RSMo. 84.570 and 84.460, do not apply to the present case as it deals solely with the Board of Police and the Boards authority over employment decisions.

Datt also relied upon the Court’s findings in *Ferguson v. Board of Police Commissioners*, 782 S.W.2d 814 (Mo.App. 1990). Again, as in *Fritzshall*, the Court was faced with the Board of Police Commissioners of Kansas City ruling upon a police

officer who was required to reside in Kansas City but chose, instead, to reside in Raymore, Missouri in violation of Policy 205. Ferguson argued that the Board's findings were not supported by competent and substantial evidence on the whole record.

Ferguson at 816. After an administrative hearing the Board found that Ferguson was in violation of the residency requirements for a Kansas City, Missouri police officer. The Court noted "In reviewing administrative decision on this ground, neither the trial court nor the court of appeals may substitute its judgment for that of the administrative body (here the Board of Police Commissioners), the credibility of witnesses is for the administrative agency." *Id.* Thus, the Courts in *Fritzshall* and *Ferguson* noted that the standard of review required that the Court of Appeals determination rested on the Board of Police Commissioner's findings and the Court of Appeals deferred to the findings of the administrative boards. The Court of Appeals further found that the administrative review boards findings were supported by competent and substantial evidence. *Fritzshall* at 23; *Ferguson* at 816.

Datt's reliance on the holdings of *Ferguson* or *Fritzshall* fail to convince this Court as they are not a compelling argument nor applicable to the facts presented in this case. Schroer's issue in dispute is not governed by RSMo. 84.570 nor 84.460, which are easily distinguished from issues underlying this case.

JUDGMENT

Therefore, it is the Judgment and Order of this Court, based on the factual determinations outlined above, that Nicholas Schroer is a qualified candidate and eligible to run as a Republican Candidate for Missouri's District 107 and shall remain on the ballot as the Republican Candidate for Missouri District 107. The Court further finds that Schroer's residence is the Gerst Home, evidenced by his intent to serve and advocate for the constituents of Missouri's 107th District.

SO ORDERD:

ENTER:

7 ABZAS
Michael Fagras, Circuit Judge
Division 4

St. Charles County, Missouri

Copy sent to each counsel of record by the Electronic Notification System

10-22-2020